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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 CAPSTACK PARTNERS, LLC,

8 Plaintiff,

9 vs.

10 CAPSTAK, INC.,

11 Defendant.
12

3:18-cv-00007-RCJ-WGC

ORDER

13 This is a trademark infringement case. Now pending before the Court is a motion to strike
14 Defendant Capstak, Inc.’s (“Capstak”) motion for sanctions. (Mot. Strike, ECF No. 24; Mot.
15 Sanctions, ECF No. 20.) For the reasons given herein, the Court denies the motion.

16 **I. FACTS AND PROCEDURAL HISTORY**

17 On September 9, 2015, Capstak filed a federal trademark application for “Capstak,”
18 which was assigned Serial No. 86/752,131. (Compl. ¶ 9, ECF No. 1.) The application was filed
19 in International Class 036 for the following services: “providing an interactive website for users
20 to organize and conduct fundraising by connecting investors and real estate developers for real
21 estate projects.” The application included a “first use date” of August 11, 2014, and a “first use
22 in commerce date” of May 1, 2015. Plaintiff CapStack Partners, LLC (“CapStack Partners”)
23 claims that both of those dates came after it commenced using its own service mark, “CapStack
24 Partners,” in commerce. On April 19, 2016, Capstak’s trademark application was granted.

1 On January 5, 2018, CapStack Partners brought this suit against Capstak for violation of
2 the Lanham Act, unfair competition, and cancellation of the Capstak trademark. On January 29,
3 through counsel, Capstak conveyed to CapStack Partners its belief that this action is frivolous
4 and was filed for an improper purpose. (Woelfel Decl. ¶¶ 4–5, ECF No. 34.) On January 30, a
5 stipulation for extension of time was entered in the record, granting Capstak until February 16 to
6 file its responsive pleading. (ECF No. 8.) On February 8, Capstak served a motion for Rule 11
7 sanctions on CapStack Partners with a letter stating the motion would be filed with the Court
8 after twenty-one days. (*See* Rule 11 Letter, ECF No. 25-1.) Capstak’s letter also requested a
9 second stipulation for extension of time to respond to the Complaint, to which CapStack Partners
10 declined to agree.

11 On February 12, with the deadline for its responsive pleading approaching, Capstak filed
12 an emergency motion for extension of time. (ECF No. 9.) The basis for this request was that
13 Capstak planned to file its motion for sanctions following the twenty-one day safe harbor period
14 prescribed by Rule 11(c)(2)—which motion would be dispositive of the case if granted—and
15 thus wished to defer the filing of its response until after the Court’s ruling on the Rule 11 issue.
16 In order to “illuminate the basis upon which the emergency motion was brought and the need to
17 extend the deadline for Capstak to file a responsive pleading,” Capstak attached its forthcoming
18 Rule 11 motion as an exhibit to its motion for extension of time. (Resp. 3, ECF No. 33.)
19 Ultimately, Magistrate Judge William G. Cobb denied the extension and ordered Capstak’s
20 responsive pleading filed by February 23. (ECF No. 14.)

21 On March 14, well after the expiration of the safe harbor period, Capstak filed its motion
22 for terminating sanctions under Rule 11. (ECF No. 20.) The next day, CapStack Partners filed
23 the instant motion to strike the motion for sanctions. CapStack Partners argues that Capstak
24 violated Rule 11’s safe harbor provision by filing its motion for sanctions, within the safe harbor

1 period, as an exhibit to its emergency motion for extension of time. The parties have agreed to
2 stay briefing of the motion for sanctions until after the Court’s ruling on the motion to strike.
3 (Stip. Extension Time, ECF No. 31.)

4 **II. LEGAL STANDARDS**

5 Rule 11 provides, in pertinent part:

6 A motion for sanctions . . . must be served under Rule 5, *but it must not be filed or*
7 *be presented to the court if the challenged paper, claim, defense, contention, or*
denial is withdrawn or appropriately corrected within 21 days after service

8 Fed. R. Civ. P. 11(c)(2) (emphasis added). “[T]he procedural requirements of Rule [11’s] ‘safe
9 harbor’ are mandatory.” *Radcliffe v. Rainbow Const. Co.*, 254 F.3d 772, 789 (9th Cir. 2001). The
10 Ninth Circuit enforces these requirements “strictly,” and will reverse any award of sanctions
11 where “the challenging party failed to comply with the safe harbor provisions, even when the
12 underlying filing is frivolous.” *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005).

13 **III. ANALYSIS**

14 The Court finds that Capstak complied with the safe harbor provision and will thus deny
15 the motion to strike. Rule 11’s prohibition on “filing” or “presenting” a motion for sanctions to
16 the court within the safe harbor period should not be construed so broadly as to encompass the
17 situation presented here. A party does not “present a motion to the court” within the meaning of
18 Rule 11(c)(2) simply by attaching it as a relevant exhibit to a motion seeking other, independent
19 relief. The mere act of apprising the court of a forthcoming Rule 11 motion and the grounds upon
20 which it will be based does not itself constitute a circumvention of the safe harbor. Indeed, the
21 extension of time sought by Capstak was entirely based on the likelihood that a Rule 11 motion
22 would be filed, and on Capstak’s belief that the grounds for making a Rule 11 motion were such
23 that the motion was likely to be granted. Therefore, within the context of their request for
24 extension of time, it was appropriate to share the motion for sanctions with the Court.

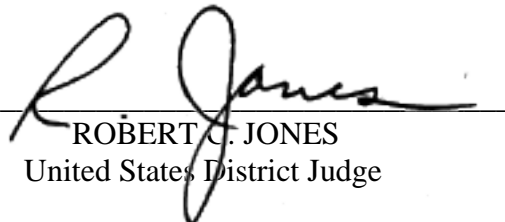
1 Accordingly, the attachment of the Rule 11 motion to Capstak's motion for extension of
2 time did not constitute a "filing" or "presentation" of the Rule 11 motion for purposes of the safe
3 harbor.¹ Capstak was not submitting the Rule 11 motion for the Court's consideration. Moreover,
4 it is clear that CapStack Partners received the full benefit of the safe harbor in this instance. Even
5 after the filing of the motion for extension of time, CapStack Partners could have taken
6 advantage of the safe harbor by withdrawing or amending the Complaint at any time within the
7 twenty-one days following service. In fact, Capstak did not actually present the Rule 11 motion
8 to the Court until thirty-four days after the motion was served. Thus, the purposes of the safe
9 harbor provision were fulfilled in this case. *See* 5A Wright & Miller, *Fed. Prac. & Proc.*, Civ. §
10 1337.2 (3d ed.) (listing the "general purposes of the safe harbor provision").

11 CONCLUSION

12 IT IS HEREBY ORDERED that the motion to strike (ECF No. 24) is DENIED.

13 IT IS FURTHER ORDERED that pursuant to the parties' stipulation (ECF No. 31),
14 CapStack Partners has fourteen days from the date of this order to file a response to Capstak's
15 motion for sanctions. Capstak will then have seven days from the date of service of that response
16 to file its reply.

17 IT IS SO ORDERED. 24 April 2018.

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19 
20 ROBERT C. JONES
United States District Judge

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22 1 To the extent that *Folta v. Winkle*, No. CV-14-01562-PHX-PGR, 2016 WL 4087103 (D. Ariz.
23 July 28, 2016) (Willett, M.J.), suggests otherwise, the Court respectfully disagrees with the
24 reasoning of that order. As an unpublished disposition from another District, *Folta* has no
binding authority here. Moreover, *Folta* is distinguishable. In that case, the motion for sanctions
was filed as an attachment to a Notice of Intent to Seek Sanctions, not as a relevant exhibit
serving to establish a basis for other relief.